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## **Division of Workers Compensation**

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# **Practice and Procedure Guide**

**Division of Workers Compensation – Kansas Department of Labor**  
**PROCEDURE MANUAL**  
**2006**

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# **I. FORMS & PUBLICATIONS**

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Following is a list of forms furnished by the Division of Workers Compensation and a brief description of their content. You may find these on the Department of Labor, Division of Workers Compensation website at [http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html)

## **Accident Reports, Benefits, and Claims Records –**

- K-WC 15:** Employee Claim for Compensation
- K-WC 107:** Informational Card listing maximum benefits and contact information
- K-WC 140:** Death Benefit Information
- K-WC 307:** Notice to employers articulating their statutory obligation to file accident reports within the determined timeframe
- K-WC 312:** Injured Worker Documentation Chart
- K-WC 1101 A:** Employer's Report of Accident
- K-WC 1101 A:** Employer's Report of Accident – Interactive (MS Word Version)
- K-WC 1101 A:** Employer's Report of Accident – Interactive (MS Excel Version)

## **Brochures of Various Agency Units –**

- P-100:** Pamphlet explaining mediation within the Workers Compensation System
- P-101:** Pamphlet explaining services provided by the Ombudsman/Claims Advisory Section
- K-WC 706:** Fraud and Abuse pamphlet

## **Hearings & Settlements –**

- K-WC D:** Final Receipt and Release of Liability Agreement
- K-WC E-1:** Application for Hearing
- K-WC E-2:** Application for Hearing for Surviving Spouse or Dependents/Heirs
- K-WC E-3:** Application for Preliminary Hearing
- K-WC E-4:** Application for Post-Award Medical
- K-WC E-5:** Application for Review and Modification
- K-WC 12:** Work Sheet for Settlements: Injury Case
- K-WC 13:** Work Sheet for Settlements: Death Case
- K-WC 139:** Pre-Trial Stipulations Worksheet
- K-WC 160:** Statement Regarding Attorney Fees

## **Elections –**

- K-WC 50:** Employee Not to Accept Coverage Under Act, 10% or more shareholder
- K-WC 50a:** Cancellation of K-WC 50
- K-WC 51:** Employer to Cover Employees Under Act, gross annual payroll is \$20,000 or less, or agricultural pursuits
- K-WC 51a:** Cancellation of K-WC 51
- K-WC 113:** Individual, Partner or Self-Employed to Come under Act
- K-WC 114:** Cancellation of K-WC 113
- K-WC 123:** Employer to Provide Coverage for Volunteer Workers
- K-WC 124:** Cancellation of K-WC 123
- K-WC 135:** Employer to Provide Coverage for Persons Performing Public or Community Service
- K-WC 135a:** Cancellation of K-WC 135
- K-WC 137:** Election of a Noncompensated Volunteer Officer, Director or Trustee of a Nonprofit Corporation to be Covered
- K-WC 137a:** Cancellation of Form 137
- K-WC 138:** Workers Compensation election information

## **Employers & Employees –**

- K-WC 25:** Workers Compensation Information for Kansas Employers and Employees Handbook
- K-WC 250:** Spanish Version of K-WC 25
- K-WC 27:** Important Information for Injured Workers
- K-WC 270:** Spanish Version of K-WC 27
- K-WC 40:** Posters employers are required to display concerning the employee's rights under the Workers Compensation Act
- K-WC 119:** Notice to employers concerning requirements of Kansas Workers Compensation laws
- K-WC 126:** Information addressing ambiguity of whether a person is an independent contractor or employee
- K-WC 136:** Information for claimants detailing services by the Ombudsman/Claims Advisory Section
- K-WC 304:** Tips for employers to reduce Workers Compensation liability
- K-WC 530:** Information for employers regarding forms K-WC 27 and K-WC 270

## **Requests for Records –**

- K-WC 97:** Request for Workers Compensation Records
- K-WC 98:** Worker's Request for Workers Compensation Records
- K-WC 99:** Notice Specifying Access Restricted Records
- K-WC 970:** Request for Workers Compensation Records (English/Spanish Version)

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**Division of Workers Compensation – Kansas Department of Labor**

**Last Revised November 7, 2006**

## **Self-Insurance –**

**K-WC 20:** Bank Fact Sheet

**K-WC 105:** Employer's Application Oath to Become a Self-Insurer

**K-WC 106:** Commonly Asked Questions and Answers Relating to Individual Self-Insurance in the State of Kansas

**K-WC 120:** Application for Self-Insurance

If you prefer to download an interactive Excel version of this form, select:

**K-WC 120:** Interactive

**K-WC 121:** Assessment Information

**K-WC 129:** Certificate of Excess Insurance

**K-WC 130:** Letter of Credit

**K-WC 130a:** Trust Operational Agreement

**K-WC 131:** Self-Insurance Aggregate Surety Bond

**K-WC 131a:** Amendatory Rider to Surety Bond

**K-WC 132:** Indemnity & Guaranty Agreement

**K-WC 133:** Statement of Insured

**K-WC 144:** Self-Insurance Information

**K-WC 158:** Liability Buildup

**K-WC 309:** Why Audited Financial Statements are Required

**K-WC 1441:** Information for Self-Insured Employers on the Kansas Workers Compensation Act

## **Annual Reports –**

Annual Reports from FY2001 to the present

## **Kansas Statutes & Regulations –**

The complete set of law and regulations concerning workers compensation in Kansas, along with current supplements to the last published hard copy law book

## **Publications For Sale –**

**K-WC 300:** Order Form for Medical Fee Schedule and Workers Compensation Laws and Regulations

The following Forms are **not** available on the Web site but may be obtained through the Director's office:

**K-WC 41:** Subpoena

**K-WC 41a:** Subpoena Duces Tecum

**K-WC 41b:** Deposition Subpoena/Deposition Subpoena Duces Tecum

**K-WC 41c:** Subpoena Duces Tecum

### **PROCEDURE MANUAL**

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**Last Revised November 7, 2006**

## **II. PLEADING REQUIREMENTS**

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If a party is represented by an attorney, all pleadings, motions and other documents under the Workers Compensation Act need to be signed by at least one attorney of record. The document needs to include the attorney's name, address and telephone number. If a party is not represented by an attorney, the document needs to be signed by the party and include their address. If any pleading, motion or other document is not signed, it will not be accepted and is considered void unless it is signed after notice of the omission. K.S.A. 44-536a.

Unless specifically provided by rule and regulation of the Director, pleadings do not need to be verified or accompanied by an affidavit. Signature of the person signifies that the person has read the pleading, the pleading is well grounded in fact and is warranted by existing law or an extension and/or modification of existing law and the pleading is not imposed for any improper purpose.

If a pleading, motion or other document is signed in violation of K.S.A.44-536a, the Administrative Law Judge, Director or Board shall impose an appropriate sanction. This may include an order to pay to the other party or parties the amount of expenses incurred because of the filing, including attorney's fees.

# **III. FILING WORKERS COMPENSATION FORMS AND PLEADINGS**

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The Division's case docketing and case record keeping system is now on a shared computer database. Therefore, it is no longer necessary to send copies of trial pleadings, motions, entries of appearances, etc., to the Director's office. Entries into the computer by the Administrative Law Judge's offices will update the records in the Director's office and vice versa.

## **WHERE TO FILE**

A pleading is to be sent to the Administrative Law Judge, if it is of the type that deals with the trial of the case, such as an application for extension of time, entry of appearance, motion for production of records, etc. An Impleading of the Workers Compensation Fund should also be sent to the Administrative Law Judge.

### **Filings sent to Administrative Law Judge** (no copies to the Director)

Entry of Appearance

Motion for Production or Protection

Motion for Extension of Time

Copy of Motion to Implead Workers Compensation Fund - original to Kansas  
Workers Compensation Fund, care of the Kansas Insurance Department; see:

<http://www.ksinsurance.org/consumers/workcomp.htm>, or

Kansas Workers Compensation Fund

Kansas Insurance Department

420 SW 9<sup>th</sup> Street

Topeka, KS 66612 (785) 296-3071



A pleading is to be sent to the Director's office if it is to create a new case, change a party, begin a new action on an existing case (i.e. application for review and modification, application for penalties), or is an application or motion dealing with the preliminary hearing subjects of temporary total compensation, medical treatment, or vocational rehabilitation. Joint Petition and Stipulations are filed with the Director's office.

**Filings sent to Director**

New case application

Pleading to change parties

Pleadings to amend date of or details of accident

Any preliminary motion or application involving

- 1) Temporary total disability compensation
- 2) Medical expenses, treatment, or physician

Joint Petition and Stipulation

Certification for Reimbursement by Workers Compensation Fund

**Filings sent to Rehabilitation Administrator**

Requests for referral in non-litigated cases

Agreed order approving a plan in non-litigated cases

**Filings not sent to any of the Division offices**

Pleadings in cases not docketed before the Director

Medical Reports (except when attached as evidence to be submitted with a form listed above)

Written claim for compensation (Form 15)

Demand under K.S.A. 44-512a

## **IV. NOTICE OF CLAIM AND TIME LIMITATIONS**

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An employee must notify their employer within 10 days of an accident. If the employer already has actual knowledge of the accident, additional notice is unnecessary. K.S.A. 44-520.

If there is just cause, the claimant shall not be denied any proceeding under the Workers Compensation Act. However, no proceeding will be maintained if notice has not been given to the employer within 75 days of the accident unless:

- 1) The employer has actual knowledge of the accident.
- 2) The employer was unavailable to receive such notice.
- 3) The employee was physically unable to give such notice.

No proceeding for compensation shall be maintainable under the Workers Compensation Act unless a written claim is served on the employer within 200 days after the date of the accident, or last authorized treatment. However, there are three situations where a claim could be served to the employer after this time period:

- 1) If compensation payments have been suspended, claims for compensation can be filed within 200 days of the last payment or last authorized medical treatment.
- 2) Claims may also be filed within one year of the death of an employee that has resulted from an injury that is within five years of the underlying accident.
- 3) Claims may also be filed within one year from the date of accident or last date of payment of compensation where accident report is not timely filed by the employer.
- 4) K.S.A. 44-557 and K.S.A. 44-520a.

There are two situations in which the starting date for the 200-day filing deadline is modified. First, if a worker is denied compensation in a civil suit, admiralty or under the federal employer's liability acts because the injured was an employee and the defendant was the employer. Second, if compensation is denied because the matter is under the Kansas Workers Compensation Act, not another state or jurisdiction. The limitation of time will begin to run from the date of termination of the case in which compensation was denied, if that proceeding was filed within 200 days of the original hearing or death.

[K-WC 15 Claim for Workers Compensation](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html)

[http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html)

## **V. OCCUPATIONAL DISEASE**

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### **Compensation Date:**

The date an employee becomes incapacitated by an occupational disease from performing their work shall be considered the date of the injury. If compensation is due, the employer at the time the worker was last exposed to occupational hazards shall be held liable. Prior employers or insurance carriers will not be required to contribute compensation. The amount of compensation will be based on the average weekly wage at the time of injury. The notice of disability and claim for compensation shall be given to such employer. However, if the employee has silicosis, the employer and insurance carrier where the employee worked for at least 60 days will be held liable. K.S.A. 44-5a06.

### **Notice of Disease and Filing of Claim:**

Written notice of an occupational disease needs to be given to the employer within 90 days after disablement. If death has resulted, notice still needs to be given to the employer within 90 days. If the employer is aware of the occupational disease, this shall be considered sufficient notice. If no claim for death or disability is filed within one year, the right to compensation shall be considered forfeited. However, the failure to file shall be deemed waived if:

- 1) No objection has been made at a hearing before any award or decision thereon.
- 2) The employer or insurance carrier makes compensation payments or the employer or insurance carrier by his or its conduct leads the employee or workman or claimant reasonably to believe that notice or claim has been waived.

The time limit shall not apply if the disease or death was caused by latent or delayed pathological conditions, changes or malignancies due to the occupation exposure to X-rays, radium, radioactive substances or machines or ionizing radiation. This is only the case if no claims have been filed within one year after the date the employee first suffered incapacity from the exposure and the employee knew, or should have known, that the disease was caused by present or prior employment. K.S.A. 44-5a17.

### **Review of Award:**

An award for compensation for an occupational disease may be reviewed and compensation increased, reduced or terminated where it was previously awarded or denied. This can be done only if proof of fraud, undue influence or change in condition is alleged and established by credible evidence. For review of previously ordered compensation, the party has one year to file after denial of award, if compensation was awarded or agreed to be paid, or after the award or the date of last payment. If the case involves silicosis, the party will have two years to file for review. K.S.A. 44-5a19.

## **VI. EMPLOYER MUST REPORT ACCIDENT TO WORKERS COMPENSATION DIRECTOR**

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It is the duty of the employer to notify the Director of an accident within 28 days from the date the injured worker notifies the employer. However, if the sustained injuries do not wholly or partially incapacitate the employee for more than the remainder of the day, shift or turn when the accident occurred, there is no need to file a report with the Division.

If the employee that was the subject of a previously filed accident has died, a supplemental report should be filed with the Director within 28 days of being notified of the death. This report should detail the facts in connection with the death and information concerning the dependents the Director may require. This report shall not be considered as evidence in any court proceeding. K.S.A. 44-557.

The time limit for the employer will only begin to run if the employee has given notification of the accident pursuant to K.S.A. 44-520 and amendments thereto.

If an accident report has not been filed, the compensation process will be commenced by serving the employer a written claim pursuant to K.S.A. 44-520a and amendments thereto. This must be done within one year from the date of the accident, suspension of payment of disability compensation, the date of the last authorized medical treatment or the death of the employee. See Notice of Claim and Time Limitations (index).

[K-WC 1101 A Employer's Report of Accident  
\(http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html\)](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html)

## **VII. EMPLOYER TO PROVIDE INFORMATION TO EMPLOYEE AFTER INJURY**

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After receiving notice of injury or death, the employer needs to mail or deliver to the employee or legal beneficiary a clear and concise description of:

- 1) The benefits available under the workers compensation act;
- 2) The process to be followed in making a claim for benefits;
- 3) The identification of the person, firm or organization directly responsible for responding to and processing a claim for workers compensation benefits;
- 4) The responsibilities of the self-insured employer, insurance company or group-funded self-insurance plan;
- 5) The assistance available from the office of the Director of workers compensation; and
- 6) The address and toll-free number that will facilitate access to the assistance available from the Director's office.

K.S.A. 44-5,102.

The requirement stated above can be met by providing the publication K-WC 27 to the injured worker. More information can be found on the Division's Website at [http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html#employers](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html#employers). Information can also be requested via the telephone at 1-800-332- 0353. Inquiries can also be made through postal mail at the following address:

KS Division of Workers Compensation  
Department of Labor  
800 SW Jackson  
Ste. 600  
Topeka, KS 66612-1227

The process to be followed in making a claim for benefits can be found in publication K-WC 25.

Assistance is available from the Ombudsman/Claims Advisory Section of the Workers Compensation Division. The relevant information regarding the Ombudsman/Claims Advisory Section can be found in publication P-101 and K-WC 136.

Forms and Publications - [http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html)



## **VIII. APPLICATION FOR HEARING**

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An injured worker must file an Application for Hearing with the Director within three years of the date of accident or within two years of the date of the last payment of compensation, whichever is later. Authorized medical treatment is considered payment of compensation. In the case of an undocumented worker, the Director will assign a number for the undocumented worker to use in place of a social security number. When the Application for Hearing is filed with the Director, the claim is docketed and assigned to an Administrative Law Judge. You may obtain the docket number and the Administrative Law Judge's name and phone number that has been assigned prior to your mailed notification by contacting the Division of Workers Compensation's Ombudsman/Claims Advisory Section at (785) 296-2996 or toll free 1-800-332-0353.

[http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html#hearings](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html#hearings)

## **IX. REQUEST FOR RECORDS**

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Pursuant to K.S.A. 44-550, the Director shall designate a person to maintain a full true and correct record of all proceedings of the Director, of all documents or papers filed by the Director, or with the Director, of all awards, orders and decisions made by the Director and such person shall be responsible for the safe custody and preservation of all such papers and documents. K.S.A. 44-550b relating to records open for public inspection excludes:

- 1) Records relating to financial information submitted by an employer to qualify as a self-insurer pursuant to K.S.A. 44-532 and amendments thereto;
- 2) Records which relate to utilization review or peer review conducted pursuant to K.S.A. 44-510j and amendments thereto shall not be disclosed except to the health care provider and as otherwise specifically provided by the workers compensation act;
- 3) Records relating to private premises safety inspections;
- 4) Medical records, forms collected pursuant to subsection (b) of K.S.A. 44-567 and amendments thereto, accident reports maintained under K.S.A. 44-550 and amendments thereto, and social security numbers pertaining to an individual which shall not be disclosed except:
  - (A) Upon order of a court of competent jurisdiction
  - (B) To the employer, its insurance carrier or its representative, from whom a worker seeks workers compensation benefits;
  - (C) To the Division of Workers Compensation for its own purposes;
  - (D) To federal or state governmental agencies for purposes of fraud and abuse investigations;
  - (E) To an employer in connection with an application for employment to an employer, its insurance carrier or representatives providing for records includes a signed release by the individual, identifies the job conditionally offered by the employer and is submitted in writing, either

by mail or electronically. Requests relating to an individual under this subsection shall be considered a record to be maintained and open to public inspection under K.S.A. 44-550 and amendments thereto except social security numbers;

(F) To the workers compensation fund for its own purposes; and

(G) To the worker upon written release by the worker.

To obtain records from the Director, a Request for Records should be sent to the Workers Compensation Division. Forms can be obtained on the website or at the Division of Workers Compensation Office.

[http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html#requests](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html#requests)

## **X. LOCATION OF PROCEEDINGS**

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Pursuant to K.S.A. 44-549, all hearings shall be held by the Administrative Law Judge (ALJ) in the county where the accident took place unless it is mutually agreed upon by the employee and employer. The award, finding, decision or order of an Administrative Law Judge, when filed in the office of the Director, shall be deemed the final award, finding, decision or order. The following is a list of the assigned counties of each judge.

### **ALJ AVERY**

Chase  
Coffey  
Douglas  
Greenwood  
Lyon  
Marion  
Osage  
Shawnee (1/2)  
Woodson

### **ALJ BARNES**

Barber (1/2)  
Butler (1/2)  
Chautauqua (1/2)  
Cowley (1/2)  
Elk (1/2)  
Harper (1/2)  
Kingman (1/2)  
Sedgwick (2/5)  
Sumner (1/2)

### **ALJ BENEDICT**

Atchison  
Brown  
Clay  
Dickinson  
Doniphan  
Geary  
Jackson  
Jefferson  
Marshall  
Morris  
Nemaha  
Pottawatomie  
Riley  
Shawnee (1/2)  
Wabaunsee  
Washington

### **ALJ CLARK**

Barber (1/2)  
Butler (1/2)  
Chautauqua (1/2)  
Cowley (1/2)  
Elk (1/2)  
Harper (1/2)  
Kingman (1/2)  
Sedgwick (1/2)  
Sumner (1/2)

### **ALJ FOERSCHLER**

Johnson (2/5)  
Leavenworth (1/2)  
Miami (1/3)  
Wyandotte (1/3)

### **ALJ FULLER**

Cheyenne  
Clark  
Comanche  
Edwards  
Finney  
Ford  
Grant  
Gray  
Greeley  
Hamilton  
Haskell  
Hodgeman  
Kearny  
Kiowa  
Lane  
Logan  
Meade  
Morton  
Ness  
Rawlings  
Scott  
Seward  
Sherman  
Stanton  
Stevens  
Thomas  
Wallace  
Wichita

**ALJ HOWARD**

Johnson (2/5)  
Leavenworth (1/2)  
Miami (1/3)  
Wyandotte (1/3)

**ALJ HURSH**

Anderson  
Bourbon  
Cherokee  
Crawford  
Franklin  
Johnson (1/5)  
Linn  
Miami (1/3)  
Wyandotte (1/3)

**ALJ KLEIN**

Allen  
Labette  
Montgomery  
Neosho  
Sedgwick (1/5)  
Wilson

**ALJ MOORE**

Barton  
Cloud  
Decatur  
Ellis  
Ellsworth  
Gove  
Graham  
Harvey  
Jewell  
Lincoln  
McPherson  
Mitchell  
Norton  
Osborne  
Ottawa  
Pawnee  
Phillips  
Pratt  
Reno  
Republic  
Rice  
Rooks  
Rush  
Russell  
Saline  
Sheridan  
Smith  
Stafford  
Trego

## **XI. ADMINISTRATIVE LAW JUDGE SCHEDULE**

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The following information details the Administrative Law Judge's days and times they conduct different proceedings. However all times and dates are subject to change and involved parties should contact the regional offices to verify specifics.

<b>Judge</b>	<b>Type</b>	<b>Day</b>
<b>Brad Avery</b> <b>(785) 296-7012</b> <b>Barbara Zeller</b> <b>Legal Assistant</b>	Preliminary PHSC Regular Hearing	Mon. – Tues. – Thurs. & Fri. Wed. Mon. – Tues. – Thurs. & Fri. <b>Lawrence</b> – First & Third Tuesday of Month <b>Emporia</b> – First & Third Friday of Month <b>Topeka</b> – All other week days
<b>Nelsonna Barnes</b> <b>(316) 264-0220</b> <b>Amber Pruitt</b> <b>Legal Assistant</b>	Preliminary PHSC Regular Hearing	Tues. & Thurs. 9 a.m. Docket Mon. & Wed. 10, 10:30, 11 a.m. Mon. thru Thurs. 1:30 p.m. and Wed. 9 a.m.
	<b>Wichita</b> – all Hearings	
<b>Bryce Benedict</b> <b>(785) 296-7012</b> <b>Sonja Smith</b> <b>Legal Assistant</b>	Preliminary PHSC Regular Hearing	Wed. 9 a.m. & 1 Docket Tues. 9 a.m. Thurs. 9/10/11 a.m. 1/2/3 p.m.
	<b>Topeka</b> – All Hearings	
<b>John Clark</b> <b>(316) 264-0220</b> <b>Sunny Byerly</b> <b>Legal Assistant</b>	Preliminary PHSC Regular Hearing	Tues. & Thurs. 9 a.m. Docket Mon. & Wed. 9/10/11 a.m. Mon. thru Thurs. 1:30 p.m.
	<b>Wichita</b> – All Hearings	

<b>Judge</b>	<b>Type</b>	<b>Day</b>
<b>Robert Foerschler</b> <b>(913) 642-7650</b> <b>Judy Odell</b> <b>Legal Assistant</b>	Regular Hearings	Every Tuesday at: 9:00 / 10:00 / & 11:00 a.m. and 1:00 / 2:00 / & 3:00 p.m.
	PHSC	Every Wednesday at 2:00 p.m.
	Preliminary Hearings	Every Thursday at 9:00 a.m.
	Addl. PHSC	Third Monday of every month at 9:00 a.m. through 01/15/2007 changing to 10:00 a.m. starting 02/19/2007
	Addl. Preliminary Hearings	Fourth Monday of every month at 9:00 a.m.
<b>Pamela Fuller</b> <b>(620)275-0414</b> <b>Mary Richardson</b> <b>Legal Assistant</b>	All proceedings are set on a docket at 9 a.m. Everyone should be present at 9 a.m. to obtain the order Proceedings will be scheduled on one work week a month in the following order:	
	Monday – Preliminary & Regular Hearings – <b>Garden City</b>	
	Tuesday - PHSC – <b>Garden City</b>	
	Wednesday – PHSC – <b>Cimarron</b>	
	Thursday – Preliminary & Regular Hearings – <b>Cimarron</b>	
	Friday – Preliminary, Regular Hearings & PHSC - <b>Liberal</b>	
<b>Steve Howard</b> <b>(913) 642-7650</b> <b>Cheryl McIntire</b> <b>Legal Assistant</b>	Preliminary	Tuesday at 1 p.m.
	PHSC	Every Mon. 1:30 p.m. & Every other Monday at 9 a.m.
	Regular Hearing	Every other Tuesday at 8:30 a.m.
	<b>Overland Park</b> – all Hearings	
<b>Ken Hursh</b> <b>(913) 642-7650</b> <b>Jane Hogan</b> <b>Legal Assistant</b>	Preliminary	Mon. & Wed. at 1 p.m.
	PHSC	Wed. at 9 a.m. & Thurs. 1 p.m.
	Regular Hearing	Thursday at 9 a.m.
	All above proceedings are conducted in <b>Overland Park</b>	
	Bi-weekly proceedings in <b>Pittsburg</b> on Tuesdays where PHSC - 9 a.m., Preliminary Hearings – 10 a.m. & Regular Hearings – 1:30 p.m.	

<b>Judge</b>	<b>Type</b>	<b>Day</b>
<b>Thomas Klein</b> <b>(316) 264-0220</b> <b>Janeth Dominguez</b> <b>Legal Assistant</b>	Preliminary	Tues. & Thurs. at 1 p.m.
	PHSC	Mon. & Wed. at 1:45 p.m.
	Regular Hearing	Mon. & Wed. at 1:00 p.m.
	First Monday of every month – Regulars all day	
	All above proceedings are conducted in <b>Wichita</b>	
<b>Bruce Moore</b> <b>(785) 827-0724</b> <b>Sandy Branda</b> <b>Legal Assistant</b>	Every other week in <b>Independence</b> Preliminary Hearings	
	9 a.m. – Wednesday, PHSC – 2:30 p.m. Tues. & 9 a.m. –	
	Wednesday & Regular Hearings Tues. 10/11 a.m. & 1/1:30,	
	2,2:30 p.m.	
	All proceedings are set on a 9 a.m. or 1:30 p.m. Docket	
	The first two Thursdays of each month held in <b>Hutchinson</b>	
	The first Friday of each month held in <b>Great Bend</b>	
	The second Friday and on alternate months the	
	third Friday held in <b>Ellsworth</b>	
	The third Wednesday of each month held in <b>Hays</b>	
	All dockets are open except in <b>Ellsworth</b> every other month	
	one docket day is dedicated to PHSC	



## **XII. WORKERS COMPENSATION HEARING ROOM LOCATIONS FOR THE STATE OF KANSAS**

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The following is a list of the hearing rooms used for workers compensation hearings in the State of Kansas and their addresses:

### **Hearing Room Locations**

**Cimarron – Gray County Courthouse – 300 South Main Street**  
**Ellsworth – Ellsworth County Courthouse – 210 N Kansas, 3<sup>rd</sup> Floor**  
**Emporia – Municipal Court Building – 518 Mechanic**  
**Garden City – 407 Campus**  
**Great Bend – Barton County Courthouse – 1400 Main Street**  
**Hays – Ellis County Courthouse – Municipal Courtroom – 1204 Fort**  
**Hutchinson – Reno County Courthouse – 206 W 1<sup>st</sup> Street**  
**Independence – Judicial Center – 300 E Main, Suite 201**  
**Lawrence – County Commission Room – 1100 Massachusetts or  
144 Judicial Law Enforcement Center – 111 E 11th**  
**Liberal – Seward County Courthouse – 415 North Washington**  
**Overland Park – 8417 Santa Fe Drive**  
**Pittsburg – Crawford County Judicial Center – 602 N Locust**  
**Salina – United Building – 119 W Iron, Suite 801**  
**Topeka – 800 SW Jackson, Lower Level**  
**Wichita – 110 E. Waterman Street**

### **XIII. COURT LOCATION FOR OUT-OF-STATE ACCIDENT**

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If an accident occurs outside of the State of Kansas but is still under the jurisdiction of the Kansas Workers Compensation Act, the Director shall designate a county where the hearing is to be held as is directed by K.A.R. 51-3-6. Both parties may submit an application requesting a location for hearing.

## **XIV. REMOVAL OF ADMINISTRATIVE LAW JUDGE FROM CASE**

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A party may file a motion for change of Administrative Law Judge pursuant to K.S.A. 44-523(e) if that party believes that it could not be afforded a fair hearing from the assigned Administrative Law Judge. The Administrative Law Judge will hear the motion promptly and informally in front of all parties in the matter. The Administrative Law Judge will decide whether to recuse him/herself. If this occurs, the Director will assign another Administrative Law Judge. If the Administrative Law Judge refuses to withdraw, the party may file an affidavit within 10 days of the Administrative Law Judge's decision in District Court in the county that the accident occurred, arguing the reason for the Administrative Law Judge's removal.

The chief district court judge shall promptly determine the legal sufficiency of the affidavit. The chief judge may assign this determination to another district court judge. If there is no other judge qualified to determine the affidavit's legal sufficiency, the chief judge will notify the district's departmental justice to appoint another district court judge. If the affidavit is found to be legally sufficient, the district court judge will order the Director to assign another Administrative Law Judge.

There are five situations that generally constitute grounds that may disqualify an Administrative Law Judge from hearing a certain matter:

- 1) The Administrative Law Judge has been engaged as counsel in the case prior to the appointment as Administrative Law Judge.
- 2) The Administrative Law Judge is otherwise interested in the case.
- 3) The Administrative Law Judge is related to either party in the case.
- 4) The Administrative Law Judge is a material witness in the case.

- 5) A party has cause to believe that they cannot obtain a fair and impartial hearing on account of personal bias, prejudice or interest of the Administrative Law Judge.

The affidavit shall state the facts and reasons for belief in any of these five areas.

## **XV. NOTICE OF INTENT**

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If there is a disagreement about whether the employee is entitled to medical or temporary total disability benefits, the applicant should notify the adverse party, in writing, of the intent to file an Application for Preliminary Hearing. This notification needs to include a specific statement of the benefit change being sought that is to be the subject of the requested preliminary hearing. If temporary total/temporary partial disability benefits are being requested, the notice of intent should state for which dates these benefits are being requested. If medical treatment is being requested, the notice of intent should specify what type of treatment is being requested and for what medical condition. If a party is requesting either a change of physician or the termination of treatment, it should be specified why the treatment being provided is unsatisfactory. If an agreement is not reached after seven days, an Application for Preliminary Hearing may be filed with the Director with a copy of the Notice of Intent and evidence attached.

## **XVI. APPLICATION FOR PRELIMINARY HEARING**

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If the Notice of Intent fails to settle the disagreement within seven days, an Application for a Preliminary Hearing should be filed with the Director of Workers Compensation, Form K-WC E-3. Such application shall include the notice of intent to the adverse party, certification that the notice was received, and if the requested change was denied or not answered. The applicant shall include medical reports or other evidence intended to be used as supporting exhibits. An Application for Preliminary Hearing shall not be entered when written notice has not been given to the adverse party. All parties will receive at least seven days notice of the hearing date. If an Application for Hearing has not been filed pursuant to K.S.A. 44-534, and proper notice of intent has been provided to the adverse party, the employee or employer should submit an Application for Hearing at the same time with the Director's Office. See Application for Hearing (index).

K.A.R. 51-3-5a and 44-534a.

[K-WC E-3 Application for Preliminary Hearing](#)

[http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html#hearings](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html#hearings)

## **XVII. SETTING A PRELIMINARY HEARING**

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After an Application for Preliminary Hearing has been filed with the Workers Compensation Division a preliminary hearing can be scheduled by:

The party requesting the hearing shall contact the Administrative Law Judge assigned by the Workers Compensation Director's office to obtain the available dates and times for the hearing.

The requesting party shall clear a date and time with all the involved counsel or parties and advise the Administrative Law Judge's office of the agreed upon date and time.

The requesting party shall send a Notice of Hearing to all involved counsel or parties with a copy to the Administrative Law Judge.

If the party has followed the preceding requirements the hearing shall proceed as scheduled.

Exhibits that will be offered into evidence must be attached to the Application For Preliminary Hearing when such application is filed with the Division. (K.S.A. 44-534a(a)(1).

K.A.R. 51-3-5a.

## **XVIII. PRELIMINARY HEARING**

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The Administrative Law Judge shall conduct the preliminary hearing in a county that they have designated. This hearing shall be summary in nature and the Administrative Law Judge shall utilize powers necessary to provide for the conduct of a full hearing on the claim under the Workers Compensation Act.

If found that the employee's injury is compensable and in accordance with the facts presented at the preliminary hearing, the Administrative Law Judge may make a preliminary award for medical compensation and temporary total disability compensation as per K.S.A. 44-534a(a)(2). This award will be in effect pending the conclusion of a full hearing on the claim. No preliminary award will be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues.

Medical reports and other records shall be considered by the Administrative Law Judge at the preliminary hearing. However, the reports shall not be considered as evidence when the Administrative Law Judge makes a final award in the case, unless all parties stipulate to the reports, records, or statements or unless the report, record or statement is later supported by the testimony of the physician, surgeon or other persons making the report, record or statement. If medical reports are not available or have not been produced before the preliminary hearing, either party is entitled to an ex parte production order upon motion to the Administrative Law Judge.

Findings shall be considered jurisdictional and subject to review by the Board on issues concerning whether the employee's injury was accidental, if the injury arose out of the course of the employee's employment, whether notice is given or claim timely made or whether certain defenses apply. The Board's review of these issues is not subject to judicial review. If a preliminary order is appealed, payment of medical compensation



and/or temporary total disability compensation shall not be stayed. The decision itself is not subject to appeal to the Board, it shall be subject to a comprehensive presentation of facts through the regular hearing.

If temporary total disability compensation is awarded, it may be ordered paid from the filing date of the application. If the Administrative Law Judge finds that, prior to filing, there were one or more periods of temporary total disability, compensation may be ordered for all periods.

The decision in preliminary hearings shall be made within five days of the conclusion of the hearing. The Administrative Law Judge may decide to leave the record open for a reasonable amount of time following the actual hearing to allow for evidence and depositions to be completed. If an Administrative Law Judge does not render a decision within five days of the conclusion of the evidence to be presented, the applicant's attorney shall notify the Director. The Director shall make demand upon the Administrative Law Judge for this decision.

## **XIX. PRE-HEARING SETTLEMENT CONFERENCE**

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The Administrative Law Judge shall conduct a pre-hearing settlement conference not more than 10 days before the first full hearing. This is done for “the purpose of obtaining stipulations from the parties, determining the issues and exploring the possibility that the parties may resolve those issues and reach a settlement prior to the first full hearing” as directed by K.S.A. 44-523(d). Also, an Administrative Law Judge shall conduct a pre-trial conference before any testimony is taken as per K.A.R. 51-3-8(b). If a settlement is not reached because one or all parties are not willing to stipulate to certain issues, the stipulations and issues will be made a part of the record.

Respondent shall be prepared to admit any and all facts respondents cannot justifiably deny. Also, respondent shall have payroll information available so they may be able to address matters concerning the average weekly wage.

Evidence shall be confined to matters pertinent to the dispute. Hearsay evidence may be admissible unless it is deemed irrelevant or redundant. The Administrative Law Judge will not be bound by rules of civil procedure or evidence.

If the weekly wage is not an issue in the case, all parties shall be prepared at the first hearing to agree on the claimant’s average weekly wage. Both parties shall exchange medical information and confer on what issues can be stipulated to and what is in dispute before the first hearing.

Prior to setting a pre-hearing settlement conference, the party requesting said conference must certify the following **in writing to the Court**:

- 1) That claimant’s medical condition has stabilized and has reached maximum medical improvement;

- 2) That claimant has received a permanent impairment of function rating
- 3) That claimant is neither receiving nor requesting temporary total disability benefits, unless prior arrangements are made with and approved by the Administrative Law Judge;
- 4) Medical and lay testimony is scheduled or will be scheduled;
- 5) That claimant is neither receiving nor requesting vocational rehabilitation; and,
- 6) That claimant will be ready to submit, by submission letter received in the Administrative Law Judge's office, within 30 days of the date of the regular hearing.

All parties to the pre-hearing settlement conference shall be prepared to make stipulations of fact and exchange offers of settlement. Counsel should obtain settlement authority prior to the pre-hearing settlement conference or shall make arrangements to have immediate access during the conference to the person with settlement authority.

The following questions shall be used to identify issues in the matter:

**Questions to Claimant:**

- 1) In what county is it claimed that claimant met with personal injury by accident?  
(If the accident occurred in a different county from that in which the hearing is held, then the parties shall stipulate that they consent to the conduct of the hearing in the county in which it is being held.)
- 2) Upon what date is it claimed that claimant met with personal injury by accident?

**Questions for Respondent:**

- 1) Does respondent admit that claimant met with personal injury by accident on the date alleged?
- 2) Does respondent admit that claimant's alleged accidental injury "arose out of and in the course" of claimant's employment?
- 3) Does respondent admit notice?

- 4) Does respondent admit that the relationship of employer and employee existed?
- 5) Does respondent admit that the parties are covered by the Kansas Workers Compensation Act?
- 6) Does respondent admit that timely claim was made?
- 7) Did the respondent have an insurance carrier on the date of the alleged accident? What is the name of the insurance company? Was the respondent self-insured?

**Questions to Both Parties:**

- 1) What was the average weekly wage?
- 2) Has any compensation been paid?
- 3) Has any medical or hospital treatment been furnished? Is claimant making claim for any future medical treatment or physical restoration?
- 4) Has claimant incurred any medical or hospital expense for which reimbursement is claimed?
- 5) What was the nature and extent of the disability suffered as a result of the alleged accident?
- 6) What medical and hospital expenses does the claimant have?
- 7) What are the additional dates of temporary total disability, if any are claimed?
- 8) Is there a need for the claimant to be referred for a vocational rehabilitation evaluation?
- 9) Is the Workers Compensation Fund to be implied as an additional party?
- 10) What witnesses will each party have testify at hearing or by deposition in the trial of the case?
- 11) Have the parties agreed upon a functional impairment rating?

The same stipulations are to be used in occupational disease cases except that questions regarding “accidental injury” shall be changed to discover facts concerning “disability from occupational disease” or “disablement.”

Permission to withdraw admissions or stipulations shall be decided by the Administrative Law Judge on a case-by-case basis.

A pre-hearing settlement conference is required by statute prior to a regular hearing and it may also be helpful to have more than one pre-hearing settlement conference to settle a claim prior to a regular hearing.

K-WC 139 Pretrial Stipulations

[http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html#hearings](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html#hearings)

## **XX. SETTING A REGULAR HEARING**

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If the parties are unable to reach a compromise at the pre-hearing settlement conference and would like to schedule a regular hearing a hearing can be scheduled by:

A party requesting the hearing shall contact the Administrative Law Judge assigned by the Workers Compensation Director's office to obtain the available dates and times for the hearing.

The requesting party shall clear a date and time with all the involved counsel or parties and advise the Administrative Law Judge's office of the agreed upon date and time.

The requesting party shall send a Notice of Hearing to all involved counsel or parties with a copy to the Administrative Law Judge.

If the party has followed the preceding requirements the hearing shall proceed as scheduled.

## **XXI. REGULAR HEARING**

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A pre-hearing settlement conference must be held prior to the regular hearing. The Administrative Law Judge may require more than one pre-hearing settlement conference. The Administrative Law Judge may require a pre-hearing settlement conference for post-award hearings.

If the parties are unable to reach a compromise at the pre-hearing settlement conference, a regular hearing is held to present the evidence before an Administrative Law Judge. The Administrative Law Judge may keep the record open after the regular hearing for a reasonable amount of time until all depositions are completed.

The Administrative Law Judge shall not be bound by adherence to technical rules of procedure during any proceeding. They will be afforded the latitude to conduct hearings in a manner deemed to give the parties “reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality,” as is stated in K.S.A. 44-523(a).

After all parties have submitted evidence, the Administrative Law Judge shall issue an award within 30 days of the final terminal date. A party’s terminal date is that party’s deadline to take deposition testimony or offer any other form of evidence. This award shall not be stayed due to lack of a submission letter. Also, if the award has not been entered within 30 days, any party may notify the Director who shall assign a Special Administrative Law Judge to enter a decision based on the record. The Director may remove the Administrative Law Judge who failed to enter the award within 30 days and reassign a different Administrative Law Judge to make an immediate decision.

## **XXII. TERMINAL DATES**

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A party's terminal date is that party's deadline to take deposition testimony, or offer any other form of evidence. When a regular hearing is conducted, the Administrative Law Judge shall set a terminal date no later than 30 days after the first full hearing to require the submission of all evidence in support of the claimant. The terminal date for the respondent shall be set, requiring the submission of all evidence in support of the respondent, 30 days thereafter. An extension may be given for the following reasons:

- 1) If the employee is being paid temporary or permanent total disability compensation.
- 2) If medical examination of the claimant could not be secured prior to the submission of the case and the examination appointment was set and its notice sent prior to submission by the claimant.
- 3) If application is made and good cause shown.
- 4) By agreement of the parties.



## **XXIII. SUBMISSION LETTERS**

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After the regular hearing, if a dispute still exists between the employer and the worker regarding compensation due, each party shall write the Administrative Law Judge a letter submitting the case for decision as is set forth in K.A.R. 51-3-5. This can only be done after a hearing has been held and all evidence has been submitted. The letter shall contain a list of evidence to be considered that includes the following information:

- 1) The dates and name of the Administrative Law Judge for each hearing held and a list of exhibits submitted at each hearing.
- 2) The date and name of witnesses in each deposition taken and a list of exhibits submitted at each deposition.
- 3) A description of any stipulations entered into by the parties outside of a hearing or deposition.
- 4) A list of any other exhibits that should be contained in the record.
- 5) An itemization of all medical expenses that are in issue.
- 6) An itemization of all medical expenses not in issue but that a party wishes itemized in the award.
- 7) A list of the issues to be decided by the Administrative Law Judge, together with a list of those items to which the parties have stipulated.

The submission letter is not required to be in a specific form but should include all the above information. The submission letter is not evidence and is merely an argument of the case by a particular party. A decision will not be stayed due to the failure to submit a letter to the Administrative Law Judge.

## **XXIV. INDEPENDENT MEDICAL EXAMINATION**

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In the case of a dispute as to the injury, the Director, at the Director's discretion or upon request of either party, may employ one or more neutral health care providers in good standing. The healthcare providers shall make such examinations of the injured employee as the Director may direct. The report shall be considered when making a final determination. K.S.A. 44-516 and 44-510e(a).

## **XXV. ADMINISTERING DEPOSITIONS**

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An Administrative Law Judge conducting a hearing or other proceeding, or any party affected by the hearing or other proceeding, may cause the depositions of witnesses residing within or without the state to be taken in the same manner prescribed by the law for like depositions in Kansas District Court civil actions.

## **XXVI. RULINGS WITHOUT CERTIFIED TRANSCRIPT**

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K.S.A 44-552(c) allows the Administrative Law Judge to make findings, awards, decisions, rulings or modifications without awaiting for the transcription of testimony if it is deemed expedient and advisable to do so.

## **XXVII. REQUIREMENTS OF FINDINGS AND AWARDS**

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K.S.A. 44-525 stipulates that all findings or awards of compensation shall include the following:

- 1) It must be signed and acknowledged by the Administrative Law Judge.
- 2) It should specify the amount due and unpaid by the employer to the employee up to the date of the award, if any.
- 3) The amount of the payments thereafter to be paid by the employer to the employee and the length of time such payment shall continue, if any.

The effective date of the award shall be the day following the date of the award.

## **XXVIII. FILING VOLUNTARY MODIFICATIONS**

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K.S.A. 44-526 establishes that any award may be modified if the terms are agreed upon by the involved parties. If the award is modified against the worker, then the agreement must be filed by the employer in the Director's office within 60 days after the execution of such agreement.

## **XXIX. EMPLOYER'S PROCEDURE TO STAY AN AWARD**

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In any proceeding where an award has been provided and judgment has not yet been granted, there are two situations K.S.A. 44-530 identifies in which an employer may appeal to stay the proceedings: (1) The employer may file an application with the clerk of the district court to approve a bond securing the payment of the compensation; (2) the employer may file a certificate from a licensed or authorized insurance company or association that the compensation amount is insured by it.

## **XXX. LUMP-SUM AWARDS**

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A lump sum will only be given as compensation in two situations that are outlined in K.S.A. 44-525. First, when a portion of the compensation is found to be due and unpaid at the time of the award. And second, when the settlement agreement has been approved by the Director. If the employee has already received payments, the amount paid by the employer will be totaled and considered credit towards the total of the lump-sum payment.

If the employee has been overpaid temporary total disability compensation and the employee is entitled to additional compensation, the Administrative Law Judge shall use the overpayment as credit towards the additional compensation. The credit shall be applied to the final week of additional compensation and then to each preceding week until the credit is exhausted.



## XXXI. JOINT PETITION AND STIPULATION

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If claimant lives out of the state and it would be a hardship to travel to the state for hearing, the parties may agree to settle the claim by an award on joint petition and stipulation according to K.A.R. 51-3-16. Joint petition and stipulation may also be used in death cases where liability and entitlement to compensation is clearly defined.

When filed, the joint petition and stipulation must be signed and accompanied by an original award or order prepared by the parties for the Director's signature. It must include the claimant's name, address, Social Security number and a notarized signature. Also, it must include the employer's name and address. The joint petition must either include within its text, or by supporting documents, the following information:

- 1) An explanation of the terms of the settlement, including average weekly wage, temporary total rate and weeks paid, if any, percent of, or approximate percent of, permanent disability. If the compensation offered, or paid, does not correspond to the compensation payable according to medical reports and/or figures given, such as average weekly wage, please explain the discrepancy. If the settlement is between respondent/carrier and Workers Compensation Fund, percentage of reimbursement and lump sum amount shall be given.
- 2) Copies of medical reports, birth certificates, death certificates, marriage certificates and any other supporting documents the case may require.
- 3) An itemization or a total of medical expenses.
- 4) An agreement that all medical bills incurred up to the date of the Joint Petition's signing have been or will be paid by respondent, or if a medical bill is not being paid by respondent, an explanation of how claimant will pay it.
- 5) If a medical bill will be paid from the settlement proceeds, there must be a statement that the bill will be paid before settlement proceeds are delivered to claimant.

## XXXII. SETTLEMENT HEARINGS

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Pursuant to K.S.A. 44-531(a), a hearing may be held for the purpose of settling a claim and liability can be released for the portion of the employer's liability at issue if it is in the best interest of the claimant, or if it will avoid undue expense, litigation or hardship to any party. See [\*Grajeda v. Aramark Uniform Services\*, Docket No. 1,013,096](#).

K.A.R. 51-3-9 states that a settlement award will not be issued unless the claimant personally testifies, medical testimony is introduced as evidence by a qualified physician and all necessary testimony required to determine the extent of the disability and the amount of compensation due is provided.

K.S.A. 44-531(a) stipulates that if the claim will be settled through a lump sum, an employee could not have returned to work for nine months at a comparable wage if the compensation is based on work disability. K.S.A. 44-531(b) also outlines that lump sum awards must be in accordance with K.S.A. 44-510b(a), K.S.A. 44-525 and K.S.A. 44-529, if applicable.

Consideration should be made to determine if a Medicare Set-Aside Trust should be set up as a condition of settlement to limit potential liability later. Claims considered for a Medicare Set-Aside Trust would be cases where the injured individual is already a Medicare beneficiary or has a "reasonable expectation" of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.

See [http://www.dol.ks.gov/WC/HTML/wc\\_ALL.html](http://www.dol.ks.gov/WC/HTML/wc_ALL.html) - Medicare Set-Aside Links.

[K-WC 12](#) & [K-WC 13](#) Work Sheets for Settlements

[http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html)

## **XXXIII. MEDICAL EVIDENCE IN SETTLEMENTS**

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K.A.R. 51-3-9 states three issues to be considered by an Administrative Law Judge when considering a settlement award. They are as follows:

- 1) The claimant personally testifies.
- 2) Qualified medical testimony is introduced as evidence either by oral testimony or submission of a documentary report based on a recent physical examination concerning the claimant's disabilities.
- 3) Any additional testimony determined to be necessary to require proper determination of the extent of disability and ensuing compensation is given.

If documentary evidence concerning the claimant's medical condition is introduced in evidence, the claimant shall testify that they have either read or had the report read to them and they understand the medical evidence.

Records of hospitalization and treatment may be received in evidence at a hearing if submitted by the claimant. Medical and hospital expenses shall be made part of the record.

## **XXXIV. ATTORNEY FEES**

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K.S.A. 44-536 Attorney fees for services rendered in connection with the securing of compensation for an employee or the employee's dependents, whether secured by agreement, order, award or a judgment in any court shall be a reasonable amount for such services or 25% of the amount of compensation recovered and paid, whichever is less, in addition to actual expenses incurred and subject to the other provisions of this section. Except as hereinafter provided in this section, in death cases, total disability and partial disability cases, the amount of attorney fees shall not exceed 25% of the sum which would be due under the workers compensation act beyond 415 weeks of permanent total disability based upon the employee's average gross weekly wage prior to the date of the accident and subject to the maximum weekly benefits provided in K.S.A. 44-510c and amendments thereto.

All attorney fees in connection with the initial or original claim for compensation shall be fixed pursuant to a written contract between the attorney and the employee or the employee's dependents, which shall be subject to approval by the Director in accordance with this section. Every attorney, whether the disposition of the original claim is by agreement, settlement, award, judgment or otherwise, shall file the attorney contract with the Director for review in accordance with this section. The Director shall review each such contract and the fees claimed thereunder as provided in this section and shall approve such contract and fees only if both are in accordance with all provisions of this section. Any claims for attorney fees not in excess of the limits provided in this section and approved by the Director shall be enforceable as a lien on the compensation due or to become due.

The Director shall specifically and individually review each claim of an attorney for services rendered under the workers compensation act in each case of a settlement agreement or a lump-sum payment.

K.S.A. 44-521 and K.S.A. 44-531.

No attorney fees shall be charged with respect to compensation for medical expenses, except where an allowance is made for proposed or future treatment as a part of a compromise settlement. No attorney fees shall be charged with respect to vocational rehabilitation benefits.

No attorney fees shall be charged in connection with any temporary total disability compensation unless the payment of such compensation in the proper amount is refused, or unless such compensation is terminated by the employer and the payment of such compensation is obtained or reinstated by the efforts of the attorney, whether by agreement, settlement, award or judgment.

If there is no dispute as to any of the material issues prior to representation of the claimant or claimants by an attorney, or where the amount to be paid for compensation does not exceed the written offer made to the claimant or claimants by the employer prior to execution of a written contract between the employee and an attorney, the fees to any such attorney shall not exceed either the sum of \$250 or a reasonable fee for the time actually spent by the attorney, as determined by the Director, whichever is greater, exclusive of reasonable attorney fees for any representation by such attorney in reference to any necessary probate proceedings.

If the amount to be paid for compensation does exceed the written offer made prior to representation, fees for services rendered by an attorney shall not exceed the lesser of:

- (1) a reasonable amount for such services;

(2) an amount equal to the total of 50% of that portion of the amount of compensation recovered and paid, which is in excess of the amount of compensation offered to the employee by the employer prior to the execution of a written contract between the employee and the attorney; or (3) 25% of the total amount of compensation recovered and paid.

K.S.A. 44-536.

## XXXV. SPECIAL ADMINISTRATIVE LAW JUDGES

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K.S.A. 44-551(d) gives the Director the authority to appoint Special Administrative Law Judges for the purpose of examining and hearing any designated cases. Special Administrative Law Judges shall be attorneys admitted to practice law in Kansas. They shall have the same authority to exercise powers of regular Administrative Law Judges. Special Administrative Law Judges shall be paid according K.A.R. 51-2-5. (\*K.A.R. 51-2-5 amended, effective November 11, 2005)

Fees include:

- 1) \$50 for each settlement hearing heard as part of a regular settlement docket.
- 2) \$50 for each settlement hearing heard as an individual setting.
- 3) \$100 for each preliminary hearing including a preliminary award or for a full hearing
- 4) \$100 for each pre-hearing settlement conference
- 5) \$85 per hour for preparing and rendering a final award. Total not to exceed \$500

(b) If a special local Administrative Law Judge incurs expense conducting one or more settlement hearings in a location other than the judge's home community, the expenses shall be assessed as costs proportionately among the cases generating the expenses.

List of Current Special Administrative Law Judges found at  
[http://www.dol.ks.gov/WC/html/wcspecialcontact\\_ALL.html](http://www.dol.ks.gov/WC/html/wcspecialcontact_ALL.html).

## **XXXVI. COURT REPORTERS & FEES**

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The Administrative Law Judge is authorized per K.S.A. 44-555 to assess all or part of the certified shorthand reporter's fees for hearings and depositions, including all copies provided and shall note the amounts on the findings, award or order. Pursuant to K.A.R. 51-2-4(d), these fees shall be assessed in the final award. If fees have already been paid by respondent and the Administrative Law Judge assesses them against another party, the designated party shall make the necessary reimbursement. A determination of reasonableness of a reporter fee shall be made by the Administrative Law Judge if the fee is challenged.

Also, K.A.R. 51-2-4 directs the court reporter transcribing a proceeding or deposition to furnish the original transcript to the Administrative Law Judge, one copy to the employer, insurance carrier or its attorney, and one copy to claimant or claimant's attorney. If the case involves the Workers Compensation Fund, a copy of the transcript should be furnished to its attorney.

If the case is settled, the original transcript of the settlement hearing shall be furnished to the Director within two weeks. This transcript shall constitute a final award.



## **XXXVII. INTERPRETERS**

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For hearings before an Administrative Law Judge or the Workers Compensation Board, an interpreter will be appointed for each person whose primary language is not English as is required by K.A.R. 51-2-6. Accommodation will be provided for anyone who is deaf, hard-of-hearing or speech-impaired, as well.

Prior to the hearing, the parties or their counsel shall notify the Administrative Law Judge's office if they will have a participant in the hearing who requires an interpreter. The Administrative Law Judge or the Workers Compensation Board will provide the interpreter upon request.

It is the responsibility of counsel to cooperate in the arrangements for the attendance and qualification of an interpreter. The Court does maintain a list of qualified interpreters. Counsel should endeavor to agree on the interpreter to ensure that the interpreter has the qualifications to serve specified at K.S.A. 75-4353 and to avoid any unnecessary delays.

A reasonable fee for the interpreter's service shall be determined and fixed by the Administrative Law Judge. Under normal circumstances, the costs shall be paid by the respondent as a hearing expense and not assessed against the person in need of accommodation.

## **XXXVIII. SUBPOENAS**

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Pursuant to K.A.R. 51-3-8(f) Subpoena forms shall be furnished by the Director upon request. Request may be by phone, facsimile or mail. The party subpoenaing witnesses shall be responsible for the completion, service and costs in connection with the subpoenas. Subpoenas should be handled to the same extent as is conferred on district courts of this state under the code of civil procedure. K.S.A. 60-303 et. seq.

There are four types of subpoena forms that may be obtained from the Director. These are not available online.

- 1) Subpoena (to appear) K-WC 41
- 2) Subpoena (to appear) Duces Tecum K-WC 41A
- 3) Deposition Subpoena/Deposition Subpoena Duces Tecum K-WC 41B
- 4) Subpoena Duces Tecum K-WC 41C

## **XXXIX. WITNESS FEES**

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Pursuant to K.S.A. 28-125, witnesses compelled to appear through subpoena shall receive the same fee and mileage as is provided for witnesses attending district court cases. These witness fees are set out in K.S.A. 28-125. The Administrative Law Judge shall apportion such fees and make orders securing their payment according to K.S.A. 44-553.

## **XL. ENFORCEMENT OF SUPPORT ORDER**

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Claims for compensation paid to the worker on a weekly basis or in lump sum shall be subject to enforcement of an order for support by means of voluntary or involuntary assignment of a portion of the compensation enumerated in K.S.A. 44-514(b).

An involuntary assignment shall be obtained from a motion filed within the case. This motion shall be served on the claimant and the claimant's counsel and it shall set forth the following:

- 1) The amount of the current support order to be enforced;
- 2) The amount of any arrearage alleged to be owed under the support order;
- 3) The identity of the payer of the compensation to the claimant, if known; and,
- 4) Whether the assignment requested seeks to attach compensation for current support or arrearages or both.

Motions for involuntary assignments of compensation shall be granted. Relief may be granted for the following:

- 1) Current support shall be collectible from benefits paid on a weekly basis but shall not exceed 25% of the workers gross weekly compensation excluding any medical compensation and rehabilitation costs paid directly to providers.
- 2) Past due support shall be collectible from lump-sum settlements, judgments or awards but shall not exceed 40% of a lump-sum, excluding any medical compensation and rehabilitation costs paid directly to providers.

An order of involuntary assignment of compensation shall be served to the payer and shall set forth the following:

- 1) Amount of the current support order;
- 2) Amount of the arrearage owed, if any;
- 3) Applicable percentage limitations;

- 4) Name and address of the payee to whom assigned sums shall be disbursed by the payer; and,
- 5) Date the assignment is to take effect and the conditions for termination of the assignment.

Any proceeding under K.S.A. 44-514(b) may consider the modification of the existing support order upon proper notice to the other interested parties.

**\* Please note, issues related to child support enforcement must be determined in the District Court and neither the Workers Compensation Board nor the Administrative Law Judges have jurisdiction to determine the propriety of a District Court's Order.**

## **XLI. REVIEW AND MODIFICATION**

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Any award, except previously approved lump-sum settlements, may be reviewed upon application by any interested party, pursuant to K.S.A. 44-528(a). Applications for review and modification must articulate at least one specific reason for the requested relief.

The Administrative Law Judge may assign one or two independent medical examinations and base their review, and possible modification, of the original award on an IME and all other competent evidence relating to the present matter. K.S.A. 44-528(a) outlines a number of conditions that would justify this modification:

- 1) The award has been obtained by fraud or undue influence.
- 2) The award was obtained without authority or as a result of serious misconduct.
- 3) The award is excessive or inadequate or the functional impairment or work disability of the employee has diminished.

The Administrative Law Judge may increase or decrease the level of compensation based on the findings in one or more of these areas subject to the limitations provided in the Workers Compensation Act.

The review and subsequent modification of an award shall be effective on the date that the increase or decrease in function occurred as is stated by K.S.A. 44-528(d). However, the effective date shall not be more than six months before the date the application was made for review.

According to K.A.R. 51-19-1, if an application for review or appeal of an award is made and the application is affirmed or modified, application for review and modification pursuant to K.S.A. 44-528 may still be made to the Division.

Except in highly unusual situations, applications for review and modification should not be made more than once in any six-month timeframe.

[K-WC E-5 Application for Review and Modification  
http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html#hearings](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html#hearings)

## XLII. POST-AWARD MEDICAL

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After an award for compensation is made, the claimant may make an application for a post-award medical hearing at any time pursuant to K.S.A. 44-510k and amendments thereto.

If medical treatment is the **only** issue herein, an Application for Post Award Medical should be filed with the Director.

See [K-WC E-4 Application for Post-Award Medical](#)

If the issues include both medical treatment and temporary total disability compensation, both an Application for Preliminary Hearing (K-WC E-3) and an Application for Post Award Medical (K-WC E-4) should be filed with the Director. Temporary total disability compensation under an Award requires a seven-day demand letter and Notice of Intent prior to the filing of an E-3 or E-4.

See [K-WC E-3 Application for Preliminary Hearing](#)  
and [K-WC E-4 Application for Post-Award Medical](#).

An Administrative Law Judge shall conduct the hearing in accordance to K.S.A. 44-523 and amendments thereto. If the Administrative Law Judge finds that further care is necessary to cure or relieve the effects of the accidental injury that was the subject of the underlying award, the Administrative Law Judge may make an award for additional medical care.

Any application for a post-award medical benefit shall receive priority by the Administrative Law Judge only to be superseded by preliminary hearings pursuant to K.S.A. 44-534a and amendments thereto. A pre-hearing settlement conference is not necessary but the parties shall meet and confer prior to the hearing. The procedure for setting a hearing is the same as a preliminary and regular hearing and all dates should be cleared through the Administrative Law Judge's office. If no agreement can be reached



prior to the hearing, the Administrative Law Judge will hear the evidence and set terminal dates for evidence to be submitted.

A post-award medical award is subject to a full review by the Board under subsection (b) of K.S.A. 44-551. Any action of the Board of the underlying issue shall be subject to review by the Kansas Court of Appeals under K.S.A. 44-556.

An Administrative Law Judge has the authority to award medical treatment relating to the underlying award up to six months before the application for post-award treatment.

Reviews of such awards shall be given priority setting with the Board, superseded only by reviews of preliminary hearings. A decision by the Board shall be rendered within 30 days from when it was submitted.

Attorney fees and costs will be awarded consistent with subsection (g) of K.S.A. 44-536.

## **XLIII. FINAL RECEIPT**

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Upon making the final compensation payment, K.S.A. 44-527 establishes that the employer shall be entitled to a final receipt for compensation that is verified by the claimant. The final receipt, or a copy thereof, should be filed by the employer in the Director's office within 60 days after its execution date. If the employer fails to file the final receipt, it shall be considered void.

The Director will accept the final receipt and it shall be considered approved unless the Director notifies each of the parties in writing within 20 days of obtaining it. Proceedings to modify the final receipt must be commenced within one year after it was approved by the Director.

[K-WC Form D Final Release](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html)

[http://www.dol.ks.gov/wc/html/wcfrmpub\\_ALL.html](http://www.dol.ks.gov/wc/html/wcfrmpub_ALL.html)

## **XLIV. TERMINATION OF COMPENSABLE CASES**

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K.A.R. 51-3-1 establishes that compensable cases may be terminated by the following five procedures:

- 1) Filing a final receipt and release of liability pursuant to K.S.A. 44-527 and amendments thereto.
- 2) By hearing and written award.
- 3) By joint petition and stipulation subject to K.A.R. 51-3-16.
- 4) By settlement hearing before an Administrative Law Judge.
- 5) By voluntary dismissal by the parties.

# **XLV. PROCEDURE FOR REPORTING SUSPECTED FRAUD OR ABUSE**

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## **Introduction**

The Division of Workers Compensation, Fraud and Abuse Section, was created in 1993 to combat fraudulent and abusive activities by employees, employers, carriers, self-insureds, and group-funded pools. The Fraud and Abuse Section is responsible for the investigation of alleged violations of the Workers Compensation Act. If a violation occurs, the Section may pursue administrative remedies, or may request that criminal charges be filed.

## **Kansas Workers Compensation Statutes**

### **Failure of Employer to Secure Workers Compensation Insurance**

In general, most employers in the state of Kansas are required to secure workers compensation insurance for employees if the total gross annual payroll for the preceding calendar year exceeded \$20,000. See K.S.A. 44-505.

### **K.S.A. 44-532(d)**

Whenever the Director has reason to believe that any employer has engaged or is engaging in the knowing and intentional failure to secure the payment of workers compensation to the employer's employees...the Director shall issue and serve upon such employer a statement of the charges with respect thereto and shall conduct a hearing in accordance with the Kansas administrative procedure act, wherein the employer may be liable to the state for a civil penalty in an amount equal to twice the annual premium the employer would have paid, had such employer been insured or \$25,000, whichever amount is greater.

### **Failure of Employer to File Accident Reports**

Pursuant to K.S.A. 44-557(a), every employer has a duty to report accidents to the Director within 28 days from the date the injured worker notifies the employer if:

- 1) The accident or alleged accident occurred in the course of the employee's employment;
- 2) The employer or employer's supervisor has knowledge; and
- 3) The personal injuries which are sustained by such accidents are sufficient, wholly or partially, to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

### **K.S.A. 44-557(d)**

The repeated failure of any employer to file or cause to be filed any report required by this section shall be subject to a civil penalty for each violation not to exceed \$250.

### **Fraudulent or Abusive Acts**

### **K.S.A. 44-5,120(e)**

Whenever the Director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the conduct of Kansas workers compensation insurance...the Director...shall issue and serve upon such person a summary order or statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.

**K.S.A. 44-5,120(d)** sets forth twenty-one (21) fraudulent or abusive acts for purposes of the workers compensation act.

The most commonly investigated violations include:

1. K.S.A. 44-5,120(d)(4)(A) and (B), which set forth that fraudulent or abusive acts or practices for purposes of the workers compensation act include willfully, knowingly, or intentionally obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by: (A) Making a false or misleading statement; or (B) misrepresenting or concealing a material fact.
2. K.S.A. 44-5,120(d)(18), which is willfully, knowingly, or intentionally refusing to pay compensation as and when the compensation is due; and
3. K.S.A. 44-5,120(d)(19), which is willfully, knowingly, or intentionally refusing to pay any order awarding compensation.

### **Fraudulent or Abusive Acts (Criminal)**

#### **K.S.A. 44-5,122(a)**

If the Director or the assistant attorney general assigned to the division of workers compensation has probable cause to believe a fraudulent or abusive act or practice or any other violation of the workers compensation act is of such significance as to constitute a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of workers compensation which relates to such act, practice or violation, may be forwarded to the prosecuting attorney of the county in which the act or any of the acts were performed which constitute the fraudulent or abusive act or practice or other violation.

**K.S.A. 44-5,125** sets forth workers compensation fraud and other acts or practices constituting crimes.

## **Procedure for Reporting Fraud**

The Director of workers compensation is authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud and abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder. K.S.A. 44-5,120(a).

**K.S.A. 44-5,122(b)** states, “[a]ny person who believes a violation of the workers compensation act has been or is being committed may notify the Division of Workers Compensation of the Department of Labor immediately after discovery of the alleged violation. The person shall send to the Division of Workers Compensation, in a manner prescribed by the Director, the information describing the facts of the alleged violation and such additional information relating to the alleged violation as the Director may require.”

**Contact:** To report a suspected violation of the workers compensation act, an individual should contact the Division of Workers Compensation, Fraud and Abuse Investigation Section. This contact may be in writing, by telephone, or online. **An individual reporting a suspected violation may remain anonymous.**

- A. Address: 800 SW Jackson Street, Suite 600, Topeka, KS 66612-1227
- B. Telephone: (785) 296-6392; or toll free: 1-800-332-0353.
- C. Online: [http://www.dol.ks.gov/WC/html/wcfraud\\_ALL.html](http://www.dol.ks.gov/WC/html/wcfraud_ALL.html)

**Information:** Any person reporting a suspected violation of the workers compensation act should provide as much information as possible, including, but not limited to, name and address of the victim (business or person), name and address of the subject, person, or business being investigated, alleged violation, and where the offense was committed.

Basic facts to remember in reporting include: WHO, WHAT, WHEN, WHERE, WHY AND HOW.

**Investigation:** If it is determined a reported violation warrants investigation, the assistant attorney general will assign the case to a special investigator. At the conclusion of the investigation, the special investigator will submit the case to the assistant attorney general for review. The assistant attorney general will determine whether to file charges or close the case.

### **Division of Workers Compensation vs. Kansas Insurance Department**

Like the Division of Workers Compensation, the Kansas Insurance Department (KID) has an Anti-Fraud Unit dedicated to combat fraud. The two fraud sections are distinguishable in terms of the violations they investigate, and it is important to understand the differences.

#### **Overview and Scope**

KID's Anti-Fraud Unit was established to handle all types of insurance-related misconduct **except for** Medicaid, Medicare, and workers compensation fraud. Thus, KID's authority encompasses a wide range of insurance fraud, whereas the Division of Workers Compensation focuses on one specific type of insurance fraud.

#### **Examples**

The following examples may be helpful in recognizing the different types of fraud and determining whether such fraud should be reported to KID or to the Division of Workers Compensation.

According to KID, insurance fraud falls primarily into two categories: internal and external. **Internal fraud** is perpetrated against an insurance company or its policyholders by insurance agents, managers, executives, or other insurance employees.

Examples include an agent or insurer making a false statement on a filing with KID or an agent or insurer pocketing premiums.



Examples of **external fraud** include arson, exaggerated claims, personal injury schemes, property fraud, homeowner, life insurance, and vehicle scams.

For a detailed list of internal and external fraud, visit

<http://www.ksinsurance.org/fraud/whatisfraud.htm>.

Examples of fraud to be investigated by the Division of Workers Compensation, Fraud and Abuse Investigation Section include working while receiving workers compensation benefits, making a false or misleading statement in pursuit of workers compensation benefits, and refusing to pay compensation when compensation is due. See K.S.A. 44-5,120(d) for a complete list of fraudulent or abusive practices. See K.S.A. 44-5,125 for workers compensation fraud and other acts constituting crimes.

**If it is still unclear where to report suspected fraud, either anti-fraud section may be contacted for assistance.**

**Kelly McPherron  
Kansas Workers Compensation  
Fraud & Abuse Investigation Section  
800 SW Jackson, Suite 600  
Topeka, Kansas 66612-1227  
(785) 296-6392  
Toll free (800) 332-0353**

**or**

**Kansas Insurance Department  
Anti-Fraud Unit  
420 SW 9th Street  
Topeka, Kansas 66612  
785-296-3918  
Toll free: (800) 432-2484**

## XLVI. ELECTIONS

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The Kansas Workers Compensation Act allows certain employers or individuals to choose their status under the Act. This process is known as filing a written statement of election. Below are the various election forms presently in use:

**Form K-WC 50** is filed by an employee of a corporation who owns 10 percent or more of the corporate stock to elect not to be covered under the Act. **Form K-WC 50a** cancels a K-WC 50 election. (See K.S.A. 44-543(b))

**Form K-WC 51** is filed by an employer that is exempt from the law to choose to be covered. This includes employers with less than a \$20,000 payroll and employers involved in agricultural pursuits. **Form K-WC 51a** cancels the election made by K-WC 51. (See K.S.A. 44-505(b))

**Form K-WC 113** is filed by an individual, proprietor, members of LLC's or partner to elect to cover himself or herself under the Act. **Form K-WC 114** cancels the election made by K-WC 113. Both of these forms must be signed by a group pool administrator or an official of the insurance carrier. A signature of an agent is **not acceptable**. (See K.S.A. 44-542a)

**Form K-WC 123** is filed by an employer to elect to provide coverage for all or part of his or her volunteer workers. **Form K-WC 124** cancels the election made by K-WC 123. (See K.S.A. 44-508(b))

**Form K-WC 135** is filed by an employer to elect to provide coverage for persons who are performing public or community service as a requirement to receive public assistance or as a result of a contract or diversion, assignment to a community corrections program, or suspension of sentence or as a condition of probation or in lieu of a fine. **Form K-WC 135a** cancels the election made by K-WC 135. (See K.S.A. 44-508(b))

**Form K-WC 137** is filed by volunteer directors, officers, or trustees of a nonprofit organization to elect coverage under the Workers Compensation Act. **Form K-**

**WC 137a** cancels the election made by K-WC 137. (See K.S.A. 44-543(a))

In order to be valid and in effect, an election must be filed with the Division of Workers Compensation. Election forms may be obtained from the Division of Workers Compensation at no charge or can be requested by telephone; call (785) 296-3441.

Election forms are also available on the Division's Website under Printable & Interactive Forms ([http://www.dol.ks.gov/wc/html/wcfrmpub\\_All.html](http://www.dol.ks.gov/wc/html/wcfrmpub_All.html)).

**Questions concerning the proper filing or use of elections can be referred to the Ombudsman/ Claims Advisory Section at (800) 332-0353.**